Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1975

No. 74-1390

TOWN OF LOCKPORT, NEW YORK, and FLOYD SNYDER, Individually and as Supervisor of the Town of Lockport,
Appellants,

vs.

CITIZENS FOR COMMUNITY ACTION AT THE LOCAL LEVEL, INC. and FRANCIS W. SHEDD, Individually and on Behalf of All Others Similarly Situated,
Appellees,

and

JOHN J. GHEZZI, Secretary of State of the State of New York, ARTHUR LEVITT, Comptroller of the State of New York, LAVERNE S. GRAF, Clerk of the County Legislature, County of Niagara, New York and KENNETH COMERFORD, County Clerk, County of Niagara, New York,
Appellees.

APPEAL FROM A THREE JUDGE COURT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

REPLY TO JURISDICTIONAL STATEMENT

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Appellees.

REPLY TO JURISDICTIONAL STATEMENT

I

The Appellees, Comerford and Graf deny that there has been any type of "change the rules after the game" as argued on Page "6" of the Jurisdictional Statement.

The District Court said merely that a majority of the voters of the whole electorate were the proper persons to adopt a Niagara County Charter and there is no question

but that the vote was sufficient. The assumption of Appellants that voters were casting votes in reliance on the premise that a dual majority was required is completely unfounded. It is unlikely that any voter cast a vote because of the voting requirements. If anything, advance knowledge of the fact that a single majority vote only was required would logically have tended to produce a greater margin of victory for the charter, since the affirmative votes came mainly from the most populous area and negative votes from the less populous areas.

II

The 1972 charter in question does not transfer any existing government functions or prerogatives or powers in contradiction to Appellants' contention.

It is stated on Page 20, paragraph 3 of the Jurisdictional Statement as follows:

> "The proposed Niagara County Charter involves major modifications in political approach. It would effect the realignment and transference of existing government functions and prerogatives among and from local government units to the proposed county government unit."

The quoted statement is untrue even though within the allegations of the amended complaint. Judge John O. Henderson allowed an amended complaint to be served in the above action, deleting the following statement from the original complaint:

> "By the terms of the proposed county charter, no function, facility, duty or power of any city, town, village or district is transferred, altered or impaired."

The allowance of an amended complaint by Judge John O. Henderson was not proper since, in fact, the 1972 charter did not disturb any function, facility, duty or power of any city, town, village or district, as a brief reading of the charter would indicate (See Sec. 2201 of the 1972 charter), as follows:

> "Section 2201. *Local Government Functions, Facilities & Powers Not Transferred, Altered or Impaired.* No function, facility, duty or power of any city, town, village, school district or other district or of any officer thereof is or shall be transferred, altered or impaired by this charter or code."

The amended complaint is much broader than the original complaint and is not consistent with the established facts upon which the lawsuit was founded.

Under the New York State Constitution and Section 33, subd. (7) of the Municipal Home Rule Law of the State of New York, the interpretation of the State of New York was that a double referendum was required for any county charter, while the interpretation of the County of Niagara was that a double referendum was required only if there was a transfer of functions, powers, duties or similar prerogatives from one local governmental unit to the other. Under the amended complaint, the United States Supreme Court is being asked to invalidate Section 33, subd. (7) of the Municipal Home Rule Law and the New York Constitution in regard to double referendums, under a complaint drawn so broadly that the whole section would be invalidated without regard to whether or not there was a transfer of functions, powers and duties, or whether the charter under consideration affected only county government administration in the narrow sense of day to day functioning.

These appellees contend that the 1972 charter before the Court transferred no functions, powers or duties and therefore, a simple majority vote was enough to enact it into law. It is also believed that if, in fact, a charter were to transfer functions, powers or duties, then the double referendum might be valid.

If the United States Supreme Court should decide this case based upon the amended complaint, it would be, in effect, deciding a question not properly before the Court because it is not premised on facts in existence. The United States Supreme Court in such an instance would be deciding a hypothetical or advisory matter which is being presented to the Court. It is believed that the reason that the complaint was amended in this fashion by the Appellants is because there was no reasonable possibility of getting the removal of the double referendum requirement by political means within the framework of the New York State Constitution and State statutes.

III

The question before the Court in regard to the 1972 charter is now moot.

On November 5, 1974, the majority of the voters of the County of Niagara adopted a charter for the County of Niagara different than the 1972 charter, which is the subject of this lawsuit. This charter was duly accepted by the Secretary of State of the State of New York for filing on February 28, 1975.

The 1974 charter supplanted and superseded the 1972 charter with the following language in Section 101:

> "Section 101. *Title and Purpose.* This charter together with any and all amendments hereto, if any, shall provide for and constitute the form of government for Niagara County, and shall supersede any and all other forms of government for the County of Niagara, including any charter previously adopted, and shall be known and may be cited as the 'Niagara County Charter'. . . ."

Therefore, for the United States Supreme Court to decide this action involving the charter enacted in 1972 would be a mere theoretical exercise having no legal consequence.

Respectfully submitted,

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